

MAR 18 1985

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Duane Marine

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March 15, 1985

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BY EXPRESS MAIL

Margaret Thompson, Esquire
Office of Regional Counsel
U.S. Environmental Protection Agency
Region II
26 Federal Plaza
Room 437
New York, NY 10278

340104



Re: Midland Glass Company, Inc.
Petition for Dismissal from Order
No. II-CERCLA-50102

Dear Ms. Thompson:

Representing Anchor Glass Container Corporation (Anchor Glass), Bradley Wiens and I met with you on January 29, 1985 to discuss Anchor Glass' January 2, 1985 petition for dismissal from the above captioned order. At that meeting you expressed the following reservations regarding the evidence submitted in support of Anchor Glass' statement that none of the materials it had sent to the Duane Marine site were hazardous:

- 1) Regnis: See separate confidential letter.
- 2) B-110: You were reluctant to accept the affidavit as proof that the material sent to Duane Marine by Midland Glass was B-110 and not a hazardous non-halogenated solvent.

In further support of its petition, Anchor Glass states as follows.

Regnis: See separate confidential letter.

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B-110: A review of the Midland Glass files reveals that the reason the material vacuumed from the machine repair shop's degreasing tanks was sent to Duane Marine was because it was laden with oil from the machinery cleaned in these tanks. Enclosed as Exhibit I are the appropriation requests for Duane Marine's services, which refer to both the cullet ponds and machine repair shop liquids as oil. Note the same terminology in the purchase orders that were supplied to EPA in response to the information request. Duane Marine was engaged to dispose of this oil because New Jersey law required that oil be disposed of by an approved special waste handler.

The material was referred to on the manifests as solvent, because it was indeed predominantly the B-110 and only partly oil. As demonstrated in our previous submittal, B-110 is a solvent in the generic sense because it is a degreasing medium, and it is not a listed hazardous non-halogenated solvent, nor does it exhibit any of the hazardous characteristics specified in the regulations, namely ignitable, reactive, corrosive or EP toxic. You raised the question as to why the material was marked as flammable on the manifest. The answer is that the material was manifested because of the oil it contained, which was marked flammable as a matter of course by the responsible party. You will note that the oil from the cullet ponds was likewise marked flammable.

Anchor Glass has submitted a sworn affidavit from Robert Ganter, the person who was on the site during the time when shipments were made to Duane Marine and who had supervisory responsibility for operation of the machine repair shop. He stated under oath that the material shipped to Duane Marine and marked as solvent was the B-110 alkaline hot tank cleaner. This sworn statement is of the same level of evidence that is accepted by courts as a basis for summary judgment, and U.S. EPA would be acting arbitrarily to disregard it. We note that in the case of Rusty Scupper and NL Industries, U.S. EPA accepted affidavits as adequate proof of lack of hazard; and in the case of Bird, Inc. and Bell Labs, letters seemed to suffice. In our case, in addition to Mr. Ganter's affidavit, we have submitted an affidavit from Bradley E. Wiens, Director of Environmental Affairs for Anchor Glass stating under oath that his investigation revealed the same thing as stated by Mr. Ganter.

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Moreover, since meeting with you, we have done an extensive review of the files for the years 1978 and 1979 in an effort to test the accuracy of Mr. Ganter's sworn statement. This review demonstrates without a doubt that the material referred to on the manifests as "solvents-mixed" was the oil-laden B-110 mixture in the hot tanks in the machine repair shop. Three bodies of evidence demonstrate this fact:

1. As discussed above, the purchase orders and appropriation requests refer to vacuuming oil from the tanks in the machine repair shop.

2. A complete review of Midland Glass' files of accounts payable and purchase orders for 1978 and 1979 reveals that the only non-halogenated solvents listed by U.S. EPA as hazardous that were purchased by Midland Glass during that period were eight 8-pint bottles of acetone on August 8, 1978. See affidavit of Bradley Wiens, attached hereto as Exhibit J. Clearly, if there were large quantities of hazardous non-halogenated solvents disposed of by Duane Marine, as EPA has assumed, the purchase records would reflect that fact.

3. Finally, Mr. Wiens has taken the available information and calculated the amount of B-110 mixture that would have been generated as waste during the period for which these wastes were manifested. See attached statement. The review of the purchase orders and accounts payable files revealed purchases of 4500 pounds of B-110 between April 1978 and December 1979. Based upon the relevant data as to mixing ratio, the density of B-110 and water and the dimensions of the shop tanks, Mr. Wiens calculated that the amount of B-110 waste expected to be generated in that time period matches almost exactly the amount appearing on the New Jersey manifests. This persuasively supports our statement that the manifested waste was the B-110 mixture.

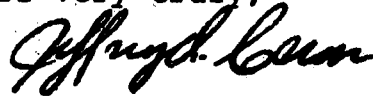
In summary, it is beyond dispute that the material Duane Marine took out from Midland Glass approximately twice weekly in 1978-79 and manifested as 23, solvents-mixed, was a non-hazardous solvent known as B-110, an alkaline hot tank degreaser. The level of evidence supplied, consisting of a sworn affidavit by a person who was on-site at the time in a responsible position, as well as powerful corroborating evidence, refutes your presumption that the material was a hazardous solvent.

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Anchor Glass requests that its petition, with the supplemental evidence supplied herein, be presented to the decision-making official and that Anchor Glass (Midland Glass Company Inc.) be dismissed from Order No. II-CERCLA-50102.

Yours very truly,



Jeffrey O. Cerar,
Counsel for Anchor Glass
Container Corporation

JOC:cmm

cc: Ms. Janet Feldstein

REQUEST FOR APPROPRIATION

Exhibit I

LOCATION: Cliffwood		PROJECT CLASSIFICATION: 03-40-29 MACHINE DISPOSAL OF WASTE OIL-REPAIR		CODE: 03	PROJECT NO.: 03-50-79
INCLUDED IN BUDGET: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		BUDGET AMOUNT:		BUDGET REFERENCE:	
PAY BACK CALCULATION: YFL _____ MOL _____ <input type="checkbox"/> NOT REQUIRED		DEPARTMENT (NAME & NO.): Machine Repair 456		DATE: November 21, 1978	
PROJECT ADMINISTRATOR: (Name) Walter Rhodes (Title) Machine Repair Supv. (Location) Cliffwood					
PROJECT TITLE: DISPOSAL OF WASTE OIL FROM MACHINE REPAIR					
REASON FOR PROJECT: In order to insure that no oil can accidentally be discharged into the sewers, Machine Repair must store any waste oils or oils from cleaning equipment in storage tanks for removal from Company property.					
DATE OF FIRST COMMITMENT: December 1, 1978		LEASE/RENTAL? <input type="checkbox"/> YES <input type="checkbox"/> NO		NOTICE TO CLOSE PROJECT? <input type="checkbox"/> YES <input type="checkbox"/> NO	
COMPLETION DATE: September 30, 1979		MAJOR MAINTENANCE? <input type="checkbox"/> YES <input type="checkbox"/> NO		SIGNATURE: DATE:	
DESCRIPTION OF ITEMS		USEFUL LIFE	APPROPRIATION AMOUNT		
months oil removal from Machine Repair storage tanks. Twice per week @ \$600.00 Bi-weekly flat charge. This includes Disposal charge. <i>(1.5 million 400,000)</i>		<i>Expense</i> <i>11/21/78</i>	CAPITAL	EXPENSE	TOTAL
				\$13,200.00	\$13,200.00
APPROPRIATION TOTAL				\$13,200.00	\$13,200.00
OTHER:			SIGNATURES		DATE
			PROJECT ADMINISTRATOR:		
			DEPARTMENT MANAGER:		
			PLANT CONTROLLER:		<i>11/22/78</i>
			PLANT MANAGER:		<i>11/21/78</i>
			OPERATIONS V.P.:		
			APPROP. COMMITTEE: <i>11/21/78</i>		<i>12/1/78</i>
			PRESIDENT:		
			CHAIRMAN:		

TO: R. Ganter ✓

DATE: November 17, 1978

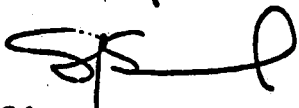
FROM: S. J. Sinnreich

SUBJECT: Duane Marine Corp.

Purchasing Department has requested a new rate structure with Duane Marine to clean our cullet ponds and remove the oil in our Machine Shop. Duane Marine has agreed that they would charge us a flat rate of \$500 every two weeks to skim our cullet ponds. This includes the disposal charges. We have been spending an average of \$1250.00 per month for this particular service. Duane has also agreed to come twice a week and bill us every two weeks for \$600.00 to dispose of the oil in our Machine Shop. We presently are averaging \$1700 per month.

I recommend that we issue the appropriate project or projects necessary for the following reasons -

- (a) The cullet ponds will now be put on a regular maintenance basis which will reduce substantially our chances of an oil spill.
- (b) Machine Shop will continue on its regular maintenance basis and
- (c) This program will save Midland over \$750.00 per month over the previous manner in which these programs have been delivered.
- (d) Paper work will be reduced and control as well as budgeting of our expenses will be facilitated.


Simon J. Sinnreich

SJS/sk

cc: P. Grayson
H. W. Garfinkel

11/21/78

REQUEST FOR APPROPRIATION

LOCATION: Cliffwood	PROJECT CLASSIFICATION: 03-457-68 CULLET DISPOSAL OF WASTE OIL-PONDS	CODE 03	PROJECT NO.: 03-51-79
INCLUDED IN BUDGET: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	BUDGET AMOUNT:	BUDGET REFERENCE:	
PAY BACK CALCULATION: YRL _____ MOL _____ <input type="checkbox"/> NOT REQUIRED	DEPARTMENT (NAME & NO.): MAINTENANCE 457	DATE: November 21, 1978	
PROJECT ADMINISTRATOR: (Name) Robert Leon (Title) Maintenance Supervisor (Location) Cliffwood			

PROJECT TITLE:
DISPOSAL OF WASTE OIL FROM CULLET PONDS

REASON FOR PROJECT: In order to insure that no oil can accidentally be discharged into sewers or waterways, it is necessary to skim any oil floating on the Cullet Ponds.

DATE OF FIRST COMMITMENT: December 1, 1978	LEASE/RENTAL? <input type="checkbox"/> YES <input type="checkbox"/> NO	NOTICE TO CLOSE PROJECT? <input type="checkbox"/> YES <input type="checkbox"/> NO
COMPLETION DATE: September 30, 1979	MAJOR MAINTENANCE? <input type="checkbox"/> YES <input type="checkbox"/> NO	SIGNATURE: DATE:

DESCRIPTION OF ITEMS	USEFUL LIFE	APPROPRIATION AMOUNT		
		CAPITAL	EXPENSE	TOTAL
10 months oil removal from Cullet Ponds December 1, 1978 to September 30, 1979 22 Bi-weekly pickups @ \$500.00 each. This includes disposal charges.	<i>Expense</i> <i>1/1/78</i> <i>11/21/78</i>		\$11,000.00	\$11,000.00
APPROPRIATION TOTAL			\$11,000.00	\$11,000.00

OTHER:	SIGNATURES		DATE
	PROJECT ADMINISTRATOR: <i>Robert Leon</i>		<i>11/21/78</i>
	DEPARTMENT MANAGER:		
	PLANT CONTROLLER: <i>RJ. Manone</i>		<i>12/4/78</i>
	PLANT MANAGER: <i>RJ. Manone</i>		<i>11/21/78</i>
	OPERATIONS V.P.:		
	APPROP. COMMITTEE: <i>W. J. ...</i>		<i>12/1/78</i>
	PRESIDENT:		
CHAIRMAN:			

AFFIDAVIT OF BRADLEY E. WIENS

1. As Director of Environmental Affairs for Anchor Glass Container Corporation ("Anchor Glass"), I met with U.S. EPA representatives on January 29, 1985 to discuss Anchor Glass' petition of January 2, 1985 seeking dismissal from the U.S. EPA order in connection with Duane Marine Salvage, Inc.

2. Following that meeting I determined that there were still available files of Midland Glass Company, Inc. ("Midland Glass") encompassing the purchases of supplies and raw materials for the years 1978 and 1979.

3. In February and March 1985, the General Counsel of Anchor Glass and I directed that the Midland Glass purchase order files and accounts payable files for 1978 and 1979 be located.

4. In March 1985, the General Counsel instructed Louise Abbruzzese, purchasing agent at the Cliffwood plant of Anchor Glass, to review those files thoroughly and to send me all purchase orders and invoices for purchases of all chemicals by Midland Glass during 1978 and 1979.

5. I have reviewed each purchase order and invoice which Louise Abbruzzese provided me from these files. This review reveals that on August 8, 1978, Ace Scientific Supply Co., Inc. shipped to Midland Glass eight 8-pint bottles of acetone.

6. The review described above revealed no purchase orders or invoices for any non-halogenated solvent listed as hazardous in 40 C.F.R. §261.31 (1984), except that referred to in paragraph 5 above.

7. The review described above revealed purchase orders for B-110 dated as follows and in the quantities indicated:

April 12, 1978	1500 lb.
March 2, 1979	1000 lb.
August 10, 1979	1000 lb.
December 10, 1979	<u>1000 lb.</u>
	4500 lb.

All purchases of B-110 were from B&J Products Co., now known as Pace Industries, Inc.

Bradley E Wiens
Bradley E. Wiens

Sworn to before me this 15th
day of March, 1985.

Mura A. Roche
Notary Public

My Commission Expires:

Notary Public, State of Florida at Large
My Commission Expires Oct. 18, 1988

DUANE MARINE AND CLIFFWOOD N.J. DISPOSAL BY MIDLAND
MATERIAL BALANCE ON PACE INDUSTRIES B110

- I. FACTS: Weighed quantity of B110 per hot tank fill = 48 lbs.
 Hot tank as filled - 4 ft. x 3 ft. x 2.25 ft. = 27 ft.³
 Rinse tank size as filled = 4 ft. x 3 ft. x 2.75 ft. = 33 ft.³
 Total B110 purchased 4/78 - 12/79 = 4500 lb.
 Weight of water = 8.34 lb./gal.

II. CALCULATIONS:

Gallons in hot tank = 27 ft.³ x 7.48 gal/ft.³ = 201.96 gal.

201.96 gal. x 8.34 lb./gal. = 1684.35 lb.

Ratio of solids to total = $\frac{1684 \text{ lb.} + 48 \text{ lb.}}{48 \text{ lb.}} = 36$

Ratio of use is: 1 to 36 of B110 to tap water.

$\frac{4500 \text{ lb.}}{1} = \frac{X \text{ lb. H}_2\text{O}}{36}$ X=162,000 lb. liquid mixture

and $\frac{162,000 \text{ lb.}}{8.34 \text{ lb./gal.}} = 19,424 \text{ gal.}$ B110 solvent waste from hot tank.

The volume of the rinse tank is 33/27 times that of the hot tank. Since both tanks were customarily vacuumed by Duane Marine, the total volume of waste would be 19424 + (33/27 x 19424), for a total of 39,498 gallons. In the 20 months of manifests we reported 40,200 gal. This represents less than a two percent difference.

III. CONCLUSIONS:

From my experience in making material balances, this is an extremely close correlation. I conclude the subject manifests truly represented the alkaline, oily wastes from B110 use as marked in Boxes "23 LF".

Bradley E. Wiens
 Bradley E. Wiens